

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

LORIE L. KIRKENDALL,)
)
Plaintiff,)
)
v.) CAUSE NO.: 1:05-CV-208-TS
)
)
SMART PROFESSIONAL)
PHOTOCOPY CORPORATION,)
)
Defendants.)

ORDER AND OPINION

This matter is before the Court on the Plaintiff's Motion to Withdraw Motion to Remand, filed on September 12, 2005.

The Plaintiff filed a motion to remand on August 22, 2005, along with an affidavit stating that her damages claim was less than \$75,000. The Defendant responded on August 31, 2005, arguing that a district court's subject matter jurisdiction is determined at the time of removal and thus the Plaintiff's subsequent concession that her damages are less than \$75,000 did not affect the Court's jurisdiction. The Plaintiff now seeks to withdraw her motion to remand, claiming that she has received additional information indicating that, more likely than not, her damages exceed \$75,000. The Plaintiff also seeks an order directing that the Plaintiff is not bound by her affidavit stating that damages are less than \$75,000.

Because the Plaintiff now asserts that her damages exceed \$75,000, there appears to be no issue as to this Court's subject matter jurisdiction and the Plaintiff's Motion to Withdraw Motion to Remand [DE 14] is GRANTED. With respect to the Plaintiff's request that she not be bound to her affidavit's statement of damages, there was no agreement with the defendant and thus no stipulation binding on the Plaintiff. *See In the Matter of the Complaint of Holly Marine Towing, Inc.*,

No. 01-1499, 2001 WL 488906 *1 (7th Cir. May 4, 2001). However, the Plaintiff has not cited any authority for the Court to direct that the Plaintiff's affidavit have no effect. Thus, that request is DENIED without prejudice.

SO ORDERED on September 19, 2005.

s/ Theresa L. Springmann
THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT